

THE INCOME TAX APPELLATE TRIBUNAL
“K” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.(TP) A. No. 305/Mum/2017 (A.Y. 2010-11)

DCIT, Central Circle-1(2) Room No. 906 Pratishtha Bhavan Old CGO Building Annexe Mumbai-400 020. (Appellant)	Vs.	M/s. Gitanjali Exports Corporation Ltd. 801-802, Prasad Chambers, Opera House Mumbai-400 004. PAN : AABCG2804N (Respondent)
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Assessee by	None
Department by	Shri Samruddhi D. Hande
Date of Hearing	28.06.2022
Date of Pronouncement	04.07.2022

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 30.9.2016 passed by learned CIT(A)-56, Mumbai and it relates to A.Y. 2010-11. The Revenue is aggrieved by the decision rendered by learned CIT(A) on the following issues :

- a) Deletion of transfer pricing adjustment relating to interest on excess period of receivables
 - b) Deletion of interest disallowance made under section 36(1)(iii) of the Act.
2. None appeared on behalf of the assessee even though notice of hearing was sent on several occasions by the Registry by registered post. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.
3. We have heard learned Departmental Representative and perused the record. The assessee is engaged in the business of manufacturing, trading, import and export of diamond jewellery. The first issue relates to transfer pricing adjustment made in respect of interest on delayed receivables. The

TPO, on noticing that the assessee has granted credit period exceeding 180 days to its associated enterprise, computed interest on delayed receivables at Rs.2,12,53,197/- as transfer pricing adjustment. The same was added by the Assessing Officer while computing total income. The Learned CIT(A) noticed that an identical adjustment made by the TPO in an earlier year in the hands of the assessee was examined by the ITAT and the Tribunal has expressed the view that such kind of re-characterization of transaction is not permissible under the law and accordingly deleted the transfer pricing adjustment made in respect of interest on delayed receivable. Following the decision of Tribunal, the learned CIT(A) deleted the disallowance.

4. The Learned Departmental Representative, however, submitted that transfer pricing adjustment made in respect of delayed receivables has since been upheld by the Tribunal in many other cases. He submitted that section 92B has also been amended to include “delayed receivables” as one of the international transactions liable for transfer pricing adjustment. The Learned Departmental Representative submitted that learned CIT(A) has not taken note of latest development on this issue. Accordingly, the learned Departmental Representative prayed that this issue may be restored to the file of learned CIT(A) for adjudicating it afresh in the light of latest development in interpretation of law.

5. We find merit in the submissions made by learned Departmental Representative on this issue. Accordingly we set aside the order passed by learned CIT(A) on this issue and restore the same to his file for adjudicating it afresh in the light of latest development of law on this issue.

6. The next issue relates to disallowance of interest expenditure relatable to work-in-progress. The Assessing Officer noticed that the assessee has been constructing two properties named Bharat Diamond Bourse and Gujarat Hira Bourse and disclosed the same as ‘work in progress’ in its books of account.

The Assessing Officer also noticed that the assessee has borrowed funds and paid interest thereon. The Assessing Officer took the view that the interest attributable to the purchase/acquisition of assets cannot be allowed as deduction under section 36(1)(iii) of the Act. Accordingly he computed interest attributable to capital asset/capital work in progress at Rs. 13,54,519/- and disallowed the same.

7. The Learned CIT(A) noticed that an identical disallowance made in A.Y. 2006-07 & 2007-08 has been deleted by the Tribunal with following observations :

“We have perused the records and considered the rival contentions carefully. The dispute is regarding disallowance of interest in relation to acquisition of asset for extension of business. Under the provisions of section 36(1)(iii), any interest on borrowings made for acquisition of assets for extension of existing business is required to be capitalized till the asset is first put to use. In this case, assessee had made total advance payment of Rs. 1,53,25,000/-for acquisition of two new premises out of payment made during the year was Rs. 10,06,000/- and balance payment had been made in the earlier years. Authorities below have proceeded with the presumption that the assets had been acquired from borrowed funds. However, no basis for such finding has been given. The assessee has pointed out that most of the payments had been made in earlier years in which year there was no disallowance of interest. Therefore, in the earlier years, the payments were made from own funds. During the year, payment was only Rs. 10.06 lakhs. Assessee had own funds of Rs. 3.95 crores and interest free borrowing of Rs. 7.92 crores. In addition, current year profit was itself Rs. 96.00 lakhs. Considering these facts in our view source of current payment is easily explained from own funds. Therefore, when the payment for acquisition of assets have been made from own funds, there cannot be any case of disallowance of interest. We therefore, set aside the order of CIT(A) and delete the addition made.

Following the decision rendered by the Tribunal cited above, the learned CIT(A) deleted the disallowance.

8. The Learned Departmental Representative submitted that the assessee in the above said year has furnished details of sources of funds used for acquiring capital asset, the assessee has proved that there was no nexus between the borrowed funds and the acquisition of capital asset. However, no

such detail has been furnished by the assessee during the year under consideration. Accordingly, the Ld D.R contended that the learned CIT(A) was not justified in deleting the disallowance without examining these factual details.

9. We find merit in the submission so made by learned Departmental Representative. It is the responsibility of the assessee to prove that there was no nexus between borrowed funds and acquisition of capital asset. We notice that the Ld CIT(A) has granted relief without examining this factual aspect. Before us also, the assessee has not furnished any detail. In the absence of relevant details, it would be difficult for the Tribunal to confirm relief granted by learned CIT(A). However, in the interest of natural justice, we are of the view that the assessee may be provided with an opportunity to furnish relevant details before Ld CIT(A). Accordingly, we set aside the order passed by learned CIT(A) on this issue also and restore the same to his file for examining it afresh.

10. In the result, the appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 04.07.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/07/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai